App. F. IX-4

1924.

File No. 203-24

Previous References (Courts)

Serial Nos. 1-4

Present

Later References

General and Revenue Secretariat.

Serial Nos. Four

Part B for December 1927

SUBJECT

Addendum to Rule 72 of order 21 of the Civil Procedure Code re the bidding for or purchasing property brought to sale by the decree holder.

GO No P 3022 dt 6-12-27 To the Regr Chief Court

Approved.

Ramaswamy Iyengar
19-12-27

G. R. S. 11] 1924-5

GENERAL AND REVENUE SECRETARIAT.

(C8)

NOTES.

File No. 203-24

FILE HEADING.

Addendum to Rule 72 order 21 of the Civil procedure code re the bidding for or purchasing property brought to sale, by the decree holder.

From

The Legislative Council

No. 8 3 S Dated 8-1-1925 Received 16-1-25

Diary No. 1024 Enclos. 1 Spare Copies. — Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that a practice prevails in certain courts of according permission to the decree holder to bid for or purchase property brought to sale in execution of a decree offered by him leaving not less than the estimated amount of the property in the sale proclamation which is unreasonable and requests sanction to the accompanying Rule of practice.

NOTES AND ORDERS.

Submit for orders with a draft.

(Sd) 16/1/25

Subst: The 1st rule proposed requires two things to be done by the decree holder viz (1) filing an affidavit setting forth any facts showing such an advantageous sale

NOTES—First Sheet.

Serial No.

Cannot otherwise be had

(2) an undertaking that he will give credit or will enter up satisfaction of the decree et - — —

3) With regard to (b) some attention is invited to the decision in 44 Mad page 680 where the principles guiding the Court in such cases are stated.

4) With regard to (c), a perusal of O 21. R 72 will show that the purchase money may be set off against the decree amount and the Court shall enter up satisfaction

5) The word "may" probably means "must", even if not it will give the Court discretion to do so set off.

6) When such is the case i.e. when the rule itself gives the Court power to do the thing, I do not see the necessity for the Court deriving that power from the undertaking of the party. X.

7) X. With regard to Rule 2. this rule does not seem to obviate the difficulty pointed out in the letter of the Reg.

8) The Court may perhaps be asked in the matter

19/3

9) (The Reg) Please collect the rules of practice in Madras High Court for the guidance on this matter

27-3

NOTE—Contn. Sheet

3

CS File No. 203 of 1946.5

Serial No.

Sub

10) Kind reference is invited to Rule 153 (page 57) of the civil Rules of Practice by Mr. R. Narayanaswamy Iyer (hereinafter put up). The proposed amendment of the High Court is not a copy of this rule except subsection 2.

8/4/46 8/4/46.

11) We have to note in the file - Please put up.

1/4

12) Send with the work referred to

1/4/46 1/4

13) The point has not been pressed & the Law Delays' Committee Report - Contains a recommendation on the point. Maybe considered along with that recommendation. CS

CS 20/1

P.T.O.

Serial No.

Contd

14 The report of the Laws' Delays Committee contains no recommendation in this matter. The British India civil justice committee have observed ~~found~~ that ~~the~~ Rule 72, ~~as proposed by the Law Court which is a copy of the British Indian Rule~~, has not prevented the decree holder from purchasing the property when he really wants it, but on the other hand it only leads to frivolous applications by the judgment debtor to set aside the sale saying that the sale is benami for the decree holder, and so void. ~~The Bombay Government therefore~~ On account of this observation perhaps the Hyder L.D. Committee have not made any recommendation. The British Committee further suggest that it would be enough to prevent fraud or undue pressure by the decree holder if the judgment debtor is allowed in a particular case to obtain an order that the decree holder should not in the circumstances stated in his (judgment debtor) affidavit be permitted to purchase. Under the circumstances, the Law Court may perhaps be requested to consider the suggestion of the British Indian civil justice committee

15) Please bring up with L.D.C's report on 12/2/27 [illegible]

16) Please bring up with the Report in [illegible]

Serial No.

17 Kind attention is invited to Rule 183 on page 37 of the Civil Rules of Practice Madras.

18 Kind reference is invited to Rule 1. & to O 21. Rule 72 & to the note in paras 2 to 8.

19 Kind reference is also invited to Chapter 30 Section 24 (Pl. x) where in the Civil Justice Committee have stated that Rule 72 was unnecessary.

(Sd) 22/4

20 The Chief Court may be consulted as regards the points noted in paras 4 to 8 above and in para 19 above.

I member) 15/9

2234/16/9

21 17/9

22 17/9

19/9 Submit 2 days

19/9 Apr 21/9

NOTE—Contn. Sheet

5047/26

6

App. F. III—2]

General and Revenue Secretariat.

No File No. 203 of 1924

Serial No. 23

Filed with the draft typed

23.9

28/9

23/9

2 To The Regtr Chief Court
No P 1679 of 27.9.27.
Requests to favour Govt. with the opinion of the Judges of the Chief Court

From
The Regtr Chief Court letter no Roc 8 33 dt 9 11/27
States that the present rule 7 2 - 2 - 9 order XXI is only permissive, but the proposed rule makes the matter clear as to the person on whom the responsibility is cast of giving credit to and setting off the purchase money and the amount due on the decree besides directing that the Court in its own motion is to do this and invites reference to para 206 (page 121) of the Law's Delay's Committee report in which it is stated that no change in the present procedure is necessary.

Though the Chief Court opinion is not definitely stated since the Law's Delay's Committee

OTE—Contn. sheet

2348

7

App. F. III—2]

General and Revenue Secretariat.

No. File No. 203 of 1924.

Serial No.

4140
21/11

have held that no change in the present practice is necessary and that the Bhip. Cant. have invited attention to this portion. It is perhaps the opinion of the Bhip. Cant that no change is necessary. Sd with draft rules

13/4
Apr 19/11

Submitted for perusal of the opinion of Ch. C.

The judges say that the Rule of practice is ~~no~~ advantageous and is not superfluous.

Evidently they meant the Rules to be ~~same~~ approved.

20/11

Leg (L-D)

Draft rules may be appd

21st Nov

21-4

21.11

22/11

22/11

Fresh orders

22/4

23/11

The draft already put up is revised and subd

Please lipe

25/11
Apr 26/11

27/4

NOTE—Contn. sheet.

Typed 28/11

2348 6

App. F. III—2]

General and Revenue Secretariat. | File No. 203 of 1924

Serial No.

Submd with a typed draft
draft fo. Sanctioning
the draft R.P is submd
for approval.

Leg (L.D)

30/11

affd
S.D.
1.12

The Regd. Chief
Proc P 3022 of 6/12/27
Approves of the
Rule of practice proposed by the
Chief Court.

B
19/1

NOTE—Contn. sheet.

Extract from page 410 of the Report of the Civil Justice Committee of British India.

Chapter 30. section 24. Order XXI, Rule 72.-

Rule 72 deals with the permission to be obtained by the decree-holder to bid for any property. This rule can be evadéd by the decree-holder purchasing the property Benami and getting a transfer from the ostensible transferee. There does not seem to be much necessity for retaining this rule now and it seems to us that it would be enough to prevent fraud or undue pressure by the decree-holder if the judgment debtor is allowed in a particular case to obtain an order that the decree-holder should not in the circumstances stated in his affidavit be permitted to purchase. The rule has not prevented the decree-holder from purchasing the property when he really wants it; but, on the other hand, it only leads to frivolous applications by the judgment debtor to set aside the sale saying, that the purchase is benami for the decree-holder and so invalid. Sometimes notices under this rule take a long time to get served and execution is delayed thereby.

30566

3024
P

Telgm:
"JUSTICE"

CHIEF COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore 8th January 1925

R. O. C. No. 833
Dis. 23-24

Cls 203-24-1

From

14. JAN. 1925

A. Sreenivasaragavachari, Esq., B.A., B.L.,
Registrar, Chief Court of Mysore.

To

B. NAGAPPA, Esq., Bar-at-Law,
Secretary to Government,
Local and Legislative Departments.

Sir,

I am directed to state that representations have been made to the Chief Court that a practice prevails in certain civil courts of only according permission to the decree-holder to bid for or purchase property brought to sale on condition of the amount offered by him being not less than the estimated value of the property as noted in the sale Proclamation. Order 21, rule 72 of the Civil Procedure Code merely states that the decree-holder shall not bid for or purchase property without express permission, and although the Court apparently has inherent powers to determine the conditions on which permission is to be given, a practice which invariably compels a decree-holder to bid for or purchase property at not less than the estimated value is as unreasonable as the one in which leave to bid is granted as a matter of course in every case.

2. I am to observe that the Chief Court considers that it is necessary that instructions should be given to the subordinate

Civil Courts in this matter and proposes accordingly to issue the accompanying rule of Practice. I am to request the favour of the sanction of Government for the same.

I have the honour to be,

S i r,

Your most obedient servant,

Themis Roposcha

R E G I S T R A R. 12/1/25

TMN/2

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

CIVIL SIDE.

Rule of Practice No....., dated the.....1925.

***

In exercise of the powers conferred by section 130 of the Code of Civil Procedure 1911 and with the approval of the Government of His Highness the Maharaja of Mysore, the Chief Court is pleased to issue the following rules for regulating the practice of the Civil Courts:-

1. An application for leave to bid, under Rule 72, Order XXI C.P.C., at the sale shall be supported by an affidavit setting forth any facts showing that an advantageous sale cannot otherwise be had; and an undertaking shall be given by or on behalf of the applicant, that, in the event of his being declared the purchaser of the property or any lot or lots, he will give credit, or will enter up satisfaction of the decree or order under which the sale is made, for the purchase money. Provided that if there are several decree-holders entitled to ratable distribution the purchase money shall be paid into court.

2. In cases in which the court may consider that the applicant should not be allowed to bid for less than the sum to be fixed, it shall be competent to the court to give leave to bid at the sale, only on condition that the applicant's bid shall not be less than the amount so fixed by the court, which amount shall, as far as ~~possible~~ practicable, be determined with reference tothe probable market value of the property, or of the lot or lots into which the property is divided for sale.

12/1/25

REGISTRAR.

PNK.

To

The Registrar,

Chief Court.

Sir,

With reference to your letter No. Roc 833/23-24 dated 8-1-25 requesting sanction to the issue of rules regulating the practice of the Civil Courts in the matter of according permission to the decree holder to bid for ~~ar~~ purchase property brought to sale under Order 21 Rule 72 Civil Procedure Code, I am directed to state that Rule No. 1 of the proposed Rules of Practice provides for, ~~the~~ among other matters, an undertaking by the decree holder that he will give credit or will enter up satisfaction of the decree etc. With regard to this, O. 21 R. 72 (2) Civil Procedure Code ~~pro~~ provides for the purchase money and the amount due under the decree being set off against one another and gives power to the Court ~~amount~~ to enter up satisfaction of the decree in whole or in part. When the rule ~~sale~~ itself gives the court power to set off and enter up satisfaction, there seems to be no necessity for the court to derive ~~devise~~ that power from the undertaking of the party.

In this connection I am also to invite reference to the recommendations of the British Indian Civil Justice Committee contained in their report (page 410) recommending the deletion of Rule 72, order XXI.

I am therefore to request you to

kindly favour Government with the opinion of the Judges of the Chief Court on these aspects.

I have etc.,

23/9 Secretary to Government,
Law Department.

23/9

6 2348/P 827

Telgm:
"JUSTICE"

CHIEF COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore 9th November 1927.

R. O. C. No. 833
Dis. 23-24

CS 203-243

From

A. Sreenivasaragavachari, Esq., B.A., B.L.,
Registrar, Chief Court of Mysore.

To

B. NAGAPPA, Esq., Bar-at-law.,
Secretary to the Government of His Highness
the Maharaja of Mysore, Law Department,
BANGALORE.

Sir,

I am directed to acknowledge the receipt of your letter No. P. 1679/Cts. dated the 27th September 1927, observing that -- Rule 1 of the proposed Rule of Practice in the matter of according permission to the Decree-holder to bid for and purchase property -- brought to sale under Order 21, rule 72, Civil Procedure Code, forwarded for sanction of Government with my letter R.O.C No. 833 of 1923-24 dated the 8th January 1925, seems to be unnecessary and inviting reference to the recommendations of the British Indian Civil Justice Committee contained in their report (page 410) recommending the deletion of Rule 72, Order 21, and calling for the opinion of the Judges of the Chief Court thereon.

In reply, I am to state as regards Rule 1, proposed, that Clause (2) of Rule 72, Order XXI is only permissive and says that -- where the Decree-holder purchases with permission, the purchase -- money and the amount due on the decree may be set off. But it does not say that the court on its own motion is to do this. The second part of the clause that the court executing the decree shall enter up satisfaction in whole or in part, can only become effective if the contingency referred to in the first portion of the clause viz., the

setting

setting off of the purchase money and the amount due on the decree, happens. The proposed rule makes the matter clear as to the person on whom the responsibility is cast of giving credit to and setting off the purchase money and the amount due on the -- decree. There is therefore no disadvantage in having the rule nor can it be said to be entirely superfluous.

2. Regarding the deletion of rule 72, Order XXI, I am to invite reference to para 206 of the Mysore Laws' Delays' -- Committee' Report (page 127), in which it is stated that no -- change in the present practice is necessary.

I have the honor to be,

Sir,

Your most obedient servant,

M Srinivasaiyar

For R E G I S T R A R.

--VN/-

Cb 203-24-4

Proceedings of the Govt. of H.H
the Maharaja of Mysore.

Read:-

Letter No.ROC.833/23-24 dated 8-1-1925 from the Registrar, Chief Court, requesting sanction to the issue of -- rules regulating the practice of the civil courts in the matter of according permission to the decree-holder to bid for or purchase property brought for sale under Order 21 Rule 72, C.P.C.

2. Letter No.P.1679/Cts.203-24 dated 27-9-1927, from the Secretary to Government, Law Department, to the Registrar, Chief Court, stating that the proposed rule (1) provides for an undertaking by the decree holder that he will give credit or enter up satisfaction of the decree, while the sub-clause (2) of Rule 72 of Order XXI empowers the Court to set off ~~from~~ the purchase money and the amount due under the decree against each other and that the British Indian Civil Justice Committee have in their report recommended the deletion of Rule 72, Order XXI, and requesting the opinion of the Chief Court in the matter.

3. Letter No.ROC.833/23-24 dated 9-11-1927, from the Registrar, Chief Court, stating that the existing sub-clause (2) of Rule 72 of Order XXI is only permissive and does not say that the court can on its own motion ~~is to~~ take action and that the proposed rule makes ~~besides making~~ the matter clear

9

as to the person on whom the responsibility is cast of giving credit to and setting off purchase money and the amount due under the decree, and inviting reference to para 206 of the report of the Laws' Delays Committee in which it is stated that no change in the present practice is necessary.

Order No.P. 3022-(1)

Dated Bangalore, 6/12/1927.

The Rule of Practice (appended to this order) proposed by the Chief Court is approved.

30/11

Secretary to Govt.,
Law Department.

To

The Registrar, Chief Court. under a cl

KNN

Proceedings of the Government of His Highness the Maharaja of Mysore.

R e a d:--

Letter No. ROC. 833/23-24 dated 8-1-1925 from the Registrar, Chief Court, requesting sanction to the issue of rules regulating the practice of the civil courts in the matter of according permission to the decree-holder to bid for or purchase property brought for sale under Order 21 Rule 72 ~~C.P.C.~~ Civil Procedure Code

2. Letter No.P. 1679/Cts. 203-24 dated 27-9-1927, from the Secretary to Government, Law Department, to the Registrar, Chief Court, stating that the proposed rule (1) provides for an undertaking by the decree holder that he will give credit or ~~an~~ enter up satisfaction of the decree, while the sub-clause (2) of Rule 72 of Order XXI empowers the Court to set off the purchase money and the amount due under the decree against each other and that the British Indian Civil Justice Committee have in their report recommended the deletion of Rule 72, Order XXI, and requesting the opinion of the Chief Court.

3. Letter No. ROC. 833/23-24 dated 9-11-1927, from the Registrar, Chief Court, stating that the existing sub-clause (2) of Rule 72 of Order XXI is only permissive and does not say that the court can on its own motion take action and that the proposed rule makes the matter clear as to the person on whom the responsibility is cast of giving credit to and setting off purchase money and the amount due under the decree, and inviting reference to para 206 of the report of the Laws' Delays' Committee in which it is stated that no change in the present practice is necessary.

.....

O r d e r, No. 3022(1) Cts 203-24

Dated, Bangalore the 6th December 1927.

The Rule of practice (appended to this order) proposed by the Chief Court is approved.

For Secy. to Govt. Law Dept.

The Registrar,
Chief Court.

TD

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Civil Side.

Rule of Practice No. . . . . dated the . . . . . 1925.

In exercise of the powers conferred by section 130 of the Code of Civil Procedure 1911 and with the approval of the Government of His Highness the Maharaja of Mysore, the Chief Court is pleased to issue the following rules for regulating the practice of the Civil Courts:-

1. An application for leave to bid, under Rule 72, Order XXI C.P.C. at the sale shall be supported by an affidavit setting forth any facts showing that an advantageous sale cannot otherwise be had; and an undertaking shall be given by or on behalf of the applicant, that, in the event of his being declared the purchaser of the property or any lot or lots, he will give credit, or will enter up satisfaction of the decree or order under which the sale is made, for the purchase money. Provided that if there are several decree-holders entitled to ratable distribution the purchase money shall be paid into court.

2. In cases in which the court may consider that the applicant should not be allowed to bid for less than the sum to be fixed, it shall be competent to the court to give leave to bid at the sale, only on condition that the applicant's bid shall not be less than the amount so fixed by the court, which amount shall, as far as practicable be determined with reference to the probable market value of the property, or of the lot or lots into which the property is divided for sale.

For Secy. to Govt. Law Dept.,

TD